

**EAST LANSING OFFICE**

ROBERT M. THRUN
PATRICK J. BERARDO
JOE D. MOSIER
DONALD J. BONATO
KEVIN S. HARTY
MICHAEL B. FARRELL
GORDON W. VAN WIEREN, JR.
BEVERLY J. BONNING

PHONE: (517) 484-8000

FAX: (517) 484-0041
FAX: (517) 484-0081

MARTHA J. MARCERO
C. GEORGE JOHNSON
LISA L. SWEN
JEFFREY J. SOLES
ROY H. HENLEY
ROBERT G. HUBER
MICHAEL D. GRESENS
CHRISTOPHER J. IAMARINO

U.S. MAIL ADDRESS
P.O. BOX 2575

EAST LANSING, MI 48826-2575

RAYMOND M. DAVIS
MICHELE R. EADDY
KIRK C. HERALD
MATTHEW D. DRAKE
CULLEN B. CASEY

OF COUNSEL
DAVID OLMSTEAD

ALL OTHER SHIPPING
2900 WEST ROAD, SUITE 400
EAST LANSING, MI 48823-1391

BLOOMFIELD HILLS OFFICE

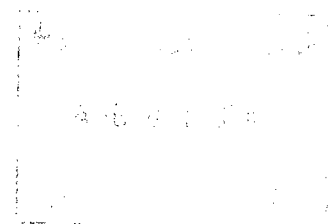
FRED M. THRUN
1896-1970
CAROLINE W. THRUN
1897-1983

DENNIS R. POLLARD
WILLIAM G. ALBERTSON
RICHARD E. KROOPNICK
ANN L. VANDERLAAN
DANIEL L. VILLAIRES, JR.

PHONE: (248) 258-2850

FAX: (248) 258-2851

August 7, 2006



The Honorable Terri Lynn Land
Secretary of State
Executive Office
Treasury Building - First Floor
430 W. Allegan Street
Lansing, MI 48918

Re: Request for Declaratory Ruling

Dear Secretary Land:

This firm serves as legal counsel for Gull Lake Community Schools (the "District"). Please consider this letter as the District's request for a Declaratory Ruling pursuant to Sections 15(1) (e) and (2) of the Michigan Campaign Finance Act ("MCFA"), P.A. 388 of 1976, as amended, MCL 169.201 et seq. and Rule 169.6 of the Michigan Administrative Code, as to the applicability of the MCFA. Under Section 63 of the Michigan Administrative Procedures Act (MCL 24.263), it is appropriate for the Michigan Department of State (the "Department") to issue a Declaratory Ruling on the request of an "interested person" . . . "as to the applicability to an actual state of facts" of the MCFA, which is administered by the Department.

Accordingly, the District seeks a Declaratory Ruling as to the applicability of the MCFA to the following actual state of facts:

1. The District is a general powers school district operating pursuant to and under the authority of the Revised School Code, MCL 380.1 et seq.
2. The District is a "public body" for the purposes of the MCFA. MCL 169.211(6)(c).



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3. The District's teachers are exclusively represented for purposes of collective bargaining under the Public Employment Relations Act ("PERA"), MCL 423.201 et seq., by the Kalamazoo County Education Association/Gull Lake Education Association (the "Association") which are affiliates of the Michigan Education Association. The District has been a party to a Collective Bargaining Agreement ("CBA") with the Association. The CBA has now expired and the District and the Association are presently engaged in negotiations for a successor contract.
4. In the most recent version of the CBA, the District was required to administer a payroll deduction plan on behalf of the Michigan Education Association Political Action Committee ("MEA-PAC"), an independent committee sponsored by the Michigan Education Association. (Attachment A).
5. In an Interpretative Statement issued to Robert LaBrant dated February 17, 2006, the Department stated:

"A public body that administers a payroll deduction plan on behalf of a segregated fund violates the Act and runs afoul of this sound public policy."
6. In OAG 2005-2006, No. 7187, p.____ (February 16, 2006), the Michigan Attorney General ruled:

"It is my opinion, therefore, that a payroll deduction plan in the state classified civil service under which state personnel and other resources are used to record, collect, and disburse employee contributions to a political action committee would violate section 57 of the Michigan Campaign Finance Act, MCL 169.257, which prohibits the use of public resources to make a political contribution. A labor union's offer to reimburse the State for the expenses involved in administering a payroll deduction plan to facilitate employee contributions to a political action committee would neither obviate the

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violation nor permit the implementation of an otherwise prohibited plan.”

7. In *Toledo Area AFL-CIO Council v. Pizza*, 154 F. 3d 307 (6th Cir. 1998), the 6th Circuit Court of Appeals upheld an Ohio statute prohibiting Ohio public employers from administering a wage check off for political donations by employees; however, the 6th Circuit Court of Appeals disallowed this prohibition as to any preexisting collective bargaining agreements between public employers and public sector unions as an impairment of the Contracts Clause of the United States Constitution. 154 F.3d at 322-327. Based on the result in *Toledo Area AFL-CIO Council v. Pizza*, there may be an argument that since the *LaBrant* Interpretative Statement (referenced in ¶ 5 above) and OAG 7187 were not published until February, 2006, that “preexisting” collective bargaining agreements which were in effect in February, 2006 and which required such deductions were not in violation of the MCFA for administering a payroll deduction plan on behalf of political action committees. However, the current CBA between the District and the local affiliate of the Michigan Education Association has expired, and the District is currently negotiating a new CBA with the labor union. Therefore, the District may not presently rely on any “preexisting collective bargaining agreement” argument to prevent a violation of the MCFA.
8. The District has every reason to believe that, as in previous versions of the CBA, the District will be asked by the Association to administer a payroll deduction plan on behalf of MEA-PAC. In fact, in current collective bargaining negotiations, the union has proposed retention of the CBA language requiring such payroll deductions for MEA-PAC and has opposed the District’s efforts to remove that language based upon OAG 2005-2006, No. 7187, as well as the Department’s February 17, 2006 Interpretative Statement, as referenced in ¶¶ 5-6 above.
9. If the District administers or assists a payroll deduction plan to benefit the MEA-PAC, and if such activity violates Section 57 of the MCFA, then the penalties are severe. According to Section 57(2) of the MCFA:

“(2) A person who knowingly violates this section is guilty of a misdemeanor punishable, if the person is an individual, by a fine of not more than \$1,000.00 or imprisonment for not more than 1



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year, or both, or if the person is not an individual,
by 1 of the following, whichever is greater:

(a) A fine of not more than \$20,000.00.

(b) A fine equal to the amount of
the improper contribution or
expenditure."

10. Because of the severe penalties which result if the District violates Section 57 of the MCFA, the Department's response to this Declaratory Ruling request will determine the District's course of conduct in this matter. According to Rule 169.6 of the Michigan Administrative Code, an "interested person is a person whose course of action would be affected by the declaratory ruling." If a mere elector is an "interested person" to receive a Declaratory Ruling from the Department as to the applicability of a statute to the operations of a political party, then the District, whose course of conduct will be directly affected by the Department's Declaratory Ruling in this matter, is certainly an "interested person" entitled to a Declaratory Ruling in this matter. Compare, *Ferency v. Austin*, 493 F Supp 683 (W.D. Mich. 1980).

Based on the foregoing, the District requests a Declaratory Ruling as to the applicability of the MCFA to the foregoing actual state of facts as follows:

1. May the District administer, consistent with MCFA, a payroll deduction plan for a political action committee for or on behalf of the Kalamazoo County Education Association, the Gull Lake Education Association or the Michigan Education Association?
2. May the District, consistent with MCFA, enter into a new CBA with the local affiliate of the Michigan Education Association which requires or permits the District to administer a payroll deduction plan on behalf of a political action committee?
3. If the labor union offers to reimburse the District for expenses involved in administering a payroll deduction plan to facilitate employee contributions to a political action committee, would this offer obviate any violation of the MCFA by the District?



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The District is relying on the Department's answers to the foregoing Declaratory Ruling questions in order to guide its future course of conduct. Although the actual state of facts above is sufficient to render a Declaratory Ruling in this matter, should the Department determine that additional facts are required to issue a Declaratory Ruling, we respectfully request the opportunity to supplement facts, as is permitted under Section 15(2) of the MCFA.

Thank you for your consideration of this matter.

Sincerely,

THRUN LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read 'Kevin S. Harty', is written over the typed name and phone number.

Kevin S. Harty
(517) 374-8832

KSH/clb
Enclosure

Cc Mr. Richard Ramsey, Superintendent of Schools, Gull Lake Community Schools
Mr. Arthur R. Przbylowicz, General Counsel, Michigan Education Association

ATTACHMENT A

ARTICLE 3 AGENCY SHOP

3.1 Except as provided in Section 1.7 below, each teacher shall, as a condition of employment, on or before thirty (30) days from the date of commencement of duties or the effective date of this Agreement, whichever is later: (a) join the Association and pay Membership Dues; or (b) pay a Service Fee to the Association; or (c) pay an amount equivalent to the Service Fee to the Gull Lake Foundation. The Teacher may authorize payroll deduction for such membership dues, service fees or equivalent amounts for payment to the Gull Lake Community Foundation.

3.11 In the event that a Teacher opting to pay a Service Fee to the Association does not pay such Service Fee directly to the Association or authorize payment through payroll deduction, the Employer shall, pursuant to M.C.L.A. 408.477, M.S.A. 17.277(7), and at the request of the Association, deduct the service fee from the Teacher's wages and remit the same directly to the Association, pursuant to the following procedures:

- a. The Association shall notify the Teacher of non-compliance by certified mail, return receipt requested. Said notice shall detail the non-compliance and shall provide ten (10) days for compliance, and shall further advise the Teacher that a request for involuntary wage deduction may be filed by the Association with the Employer in the event compliance is not effected.
- b. If the Teacher fails to remit the service fee or authorize deduction for same, the Association may request the Employer to make an involuntary wage deduction pursuant to Section 1.11 of this Article.
- c. The Employer, upon receipt of request for involuntary deduction, shall provide the Teacher with an opportunity for a due process hearing provided that the teacher requests the hearing within ten (10) days of the teacher's receipt of the notice from the Association in 1.11 a, above. This hearing shall address the question of whether or not the Teacher has remitted the service fee to the Association or authorized payroll deduction of same. The Association shall be a participant in this hearing.

3.12 The amount of the Service Fee, which shall not exceed the maximum amount permitted by law, shall be determined by the MEA and the NEA on or before December 1 of each contract year. Teachers opting to make payments to the Gull Lake Community Foundation shall pay an amount equivalent to the Service Fee.

3.13 Service Fee and membership dues payroll deductions made pursuant to this Article shall be made in equal amounts, as nearly as may be, from the paychecks of each Teacher. Amounts so deducted shall be remitted to the Association no later than twenty (20) days following deduction.

3.14 Teachers hired during the school year or whose employment terminates during the school year shall be required to tender only a pro rata amount of the membership dues or service fees to the Association or the pro rata amount to the Gull Lake Community Foundation.

3.2 Nothing in this Article shall be interpreted or applied to require involuntary or passive deduction of employee contributions to political action or other similar funds of the Association or its affiliates. Such deductions shall only be made with the affirmative written and voluntary consent of the employee, on file with the Employer, in accordance with applicable statutory provisions.

3.3 Pursuant to Chicago Teachers Union v Hudson, 106 S Ct 1066 (1986), the Association has established a policy regarding "Objections to Political-Ideological Expenditures - Administrative Procedures". That Policy, and the administrative procedures (including the timetable for payment) pursuant thereto, applies only to non-Association bargaining unit members. The remedies set forth in that policy shall be exclusive, and unless and until such procedures (including any administrative or judicial review thereof) shall have been availed of and exhausted, no dispute, claim or complaint by such objecting bargaining unit member concerning the application and interpretation of this Article shall be subject to the Contract Enforcement Procedure set forth in this Agreement.

3.4 The Association represents that the amount of the Service Fee charged to non-members, along with other required information, may not be available and transmitted to non-members until mid-school year (December, January or February). Consequently, the parties agree that the procedures in this Article relating to the payment or non-payment of the service fee by non-members shall be activated thirty (30) days following the Association's notification to non-members of the fee for that given school year.

3.5 The Association will certify annually to the Employer, at least fifteen (15) days prior to the date of the first payroll deduction for membership dues and at least fifteen (15) days prior to the date of the first payroll deduction for service fees, the amount of said dues and service fees to be deducted by the Employer, and that the service fee includes only those amounts permitted by this Agreement and by law.

The Association agrees, upon request from the Employer, to provide the Employer for its review a copy of the Association's current "Policy and Administrative Procedures Regarding Objections to Political/Ideological Expenditures". The Association further agrees to certify to the Employer that the Association and its affiliates have complied with the above policy and administrative procedures prior to requesting enforcement by the Employer of the service fee obligation contained in this Article. It is understood that the only enforcement mechanism for remittance of service fees created by this Agreement is the involuntary wage deduction procedure set forth in Section 1.1 of this Article.

3.6 Further, the Association agrees to promptly notify the Employer in the event a Court order, an order of an administrative agency, or arbitration award is rendered restricting the